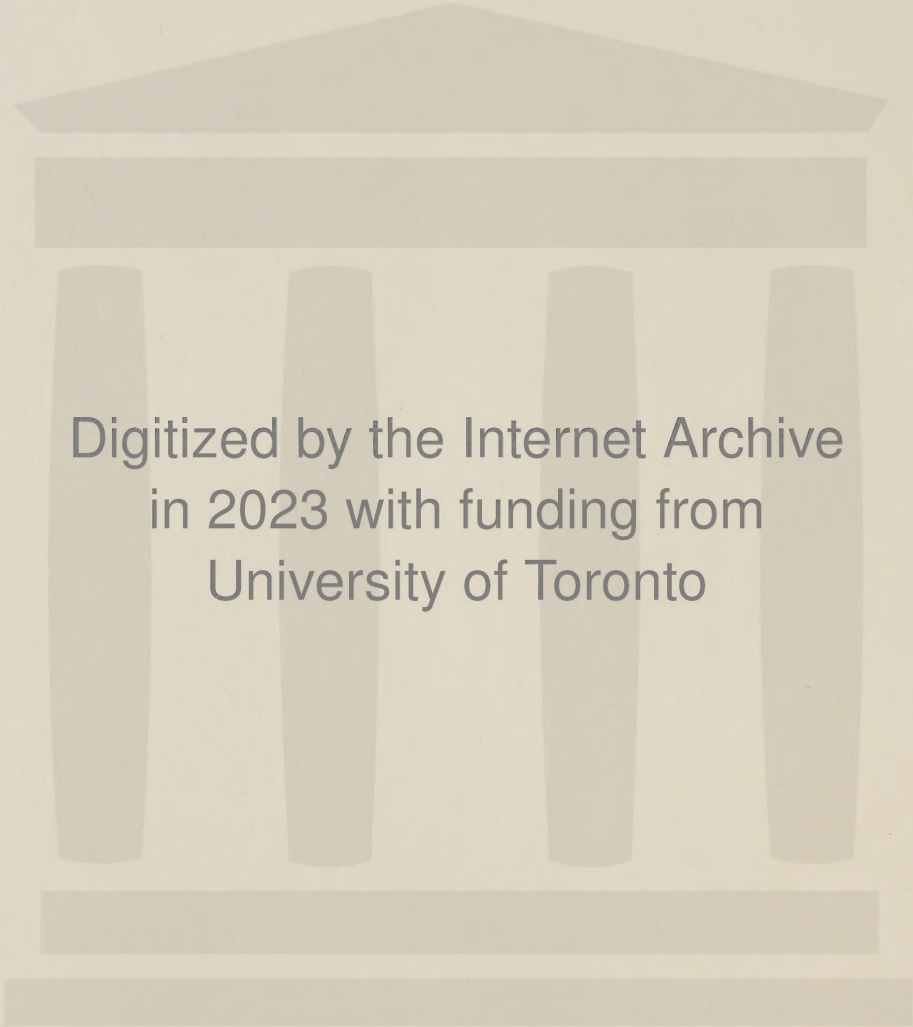

ON EMPLOYMENT EQUITY

A BRIEF BY

THE CANADIAN ADVISORY COUNCIL ON THE STATUS OF WOMEN

TO THE LEGISLATIVE COMMITTEE ON EMPLOYMENT EQUITY (BILL C-62)

December 1985

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INTRODUCTION

Women are entering the labour force in unprecedented numbers. While the female labour force grew by 119.4% between 1966 and 1982, the male labour force grew only by 35.6%.[1] It is probable that by the latter part of this decade Canadian women will have the highest labour force participation rate among industrialized countries with the possible exception of Sweden.[2] By the end of the decade they are expected to constitute nearly half of the labour force.[3]

However, since the Report of the Royal Commission on the Status of Women in 1970 the improvement in the status of women has been modest. Women now earn 64% of what men earn compared to 59.7% in 1971.[4] They continue to be concentrated in traditional "female", white-collar and service occupations (60% are in clerical, sales, and service occupations).[5] There are still very few women represented in the high-income occupations (only 8.5% of employed women are in managerial or administrative positions).[6] Women make up 72% of all part-time workers, even though one in every four employed on a part-time basis would prefer a full-time job.[7] Their unemployment rate is now higher than the unemployment rate for men (10.7% for women, 8.3% for men in September 1985).[8]

It is against this backdrop of women's rising labour force participation, continuing low pay, and job segregation that the equality provisions of the **Canadian Charter of Rights and Freedoms** came into force on April 17, 1985. Section 15(1) of the Charter guarantees for every individual the right to equal protection and equal benefit of the law without discrimination, and Section 15(2) states that subsection (1) does not preclude laws and programs intended to ameliorate conditions of disadvantaged groups, including those disadvantaged because of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability. Moreover, Section 36 of the Charter states that Parliament and the government of Canada are committed, with the provinces, to promoting equal opportunities for the well-being of Canadians and furthering economic development to reduce disparity in opportunities.

Thus, the Charter testifies to Canadians' belief in equality. It constitutionally enshrines the right of every individual to equal employment

opportunities. It establishes the need to eliminate discriminatory practices and redress imbalances due to past discrimination as a constitutional goal which must be reached. In effect, Section 15 of the Charter ends the debate over whether the State should intervene to ensure equality in Canada. Canadians have agreed that it should. The government of Canada is constitutionally committed to this principle.

The remaining question, which we are now in the process of addressing, is **how** to achieve equality in practice, particularly in the key area of employment.

In seeking the solution to this question, the federal government established, in June 1983, a Royal Commission to inquire into "the most efficient, effective and equitable means of promoting employment opportunities, eliminating systemic discrimination and assisting all individuals to compete for employment opportunities on an equal basis".[9]

The Royal Commission on Equality in Employment (Commissioner: Judge Rosalie Silberman Abella) reported its findings in October 1984. This Commission recommended the implementation of employment equity throughout the federal jurisdiction, which includes federally regulated employers (e.g., banks, inter-provincial transportation companies), Crown corporations (e.g., CBC, Air Canada), government departments, agencies and businesses, and private sector companies with government contracts. The actions proposed would entail the elimination of discriminatory employment systems and practices, and the implementation of remedial measures designed to improve the situation for individuals, who because they belong to a particular group, find themselves unfairly affected by certain systems or practices.

The focus of employment equity as outlined by the Abella Commission is on the effects of practices or systems that may appear to be neutral with respect to gender or race but which have a differential impact on certain groups. This "systemic" approach acknowledges that people can be disadvantaged and discriminated against even when no conscious or malicious intent exists.

Employment equity is based upon a concept of equality which acknowledges that it "sometimes . . . means treating people the same, despite their

differences, and sometimes it means treating them as equals by accommodating their differences."[10] The notion that equality means treating people the same has been superceded by the recognition that ignoring differences and refusing to accommodate them can result in denying people equal access to opportunities. For example, instead of denying women access to a job requiring great physical strength, an employer could provide the appropriate equipment to enable a woman (or anyone) to do the job.

Certain adjustments to employment systems, practices, and policies are clearly necessary in order to ensure equal access to employment opportunities for all individuals. Whether the efforts to adjust the system are called employment equity, or the older term, affirmative action, their purpose is to open the access and competition to all who would have been eligible but for the existence of the discrimination, conscious or unconscious.

The Abella Commission specifically recommended that all federally regulated employers be required by legislation to implement employment equity. It recommended that this legislation include three components:

1) a requirement that federally regulated employers take steps to eliminate discriminatory employment practices;

2) a requirement that federally regulated employers collect and file annually data on the participation rates, occupational distribution, and income levels of employees in their workforces, by designated group; and

3) an enforcement mechanism.[11]

Under the Abella scheme, data would be collected by employers on the representation of individuals from four target groups (i.e., women, aboriginal peoples, persons with disabilities and persons who are, because of their race or colour, members of a visible minority in Canada) in hirings, promotions, terminations, lay-offs, part-time work, contract work, internal task forces or committees, and training and educational leave. These data would be filed annually with an enforcement agency, which would assess the data and make it public by tabling a report in Parliament each year. The enforcement agency, which would monitor the progress of employment equity, would be independent from

government and have sufficient resources, including qualified staff, to carry out its mandate. It would be able to levy penalties on offenders.

The Canadian Advisory Council on the Status of Women expressed immediate support for the conclusions of the Abella Commission; the Council's recommendations reaffirmed those of the Commission. It explicitly supported the central recommendation, namely the immediate introduction of employment equity legislation, and endorsed the view that this legislation include the three components enumerated above.

The federal government responded to the Abella Commission report on March 8, 1985, with a promise of new legislation to institute employment equity within federally regulated companies, including Crown corporations. The government also introduced, at this time, certain employment equity measures affecting the Public Service, Crown corporations, and private sector companies bidding for federal contracts.

The CACSW quickly responded to these proposals, expressing approval of the government's intention to implement employment equity throughout federally regulated businesses, to introduce "contract compliance" measures, and to strengthen its Public Service affirmative action program. However, the Council was disappointed that the government's proposals lacked any mechanism to provide coordinated and effective enforcement of employment equity.

This concern, and others, was again expressed by the Council in its recommendations put forward at a meeting of Council members on June 5, 1985. The Council recommended at this time that the powers and resources of the Canadian Human Rights Commission (CHRC) be increased to enable it to enforce employment equity effectively, or that an independent monitoring and enforcement agency be created. This was based upon the Council's (and the Abella Commission's) belief that reliance on public scrutiny to enforce employment equity programs is inadequate. At that time, the Council further recommended that employers within the scope of the government's employment equity program be required to collect and report a full range of information on their work forces including, but not limited to:

- work force profiles, standardized data on target group members by occupation and salary;

- data showing movements within the work force, including standardized data on turnover and vacancy rates, hirings, lay-offs, terminations, promotions, and training and development, for all target groups by occupation and salary.

On June 28, 1985, the Minister of Employment and Immigration, Flora MacDonald, introduced Bill C-62, **An Act Respecting Employment Equity**. The Advisory Council expressed its congratulations to the Minister for tabling legislation aimed at achieving equality in the work place. It also informed the Minister of its concerns as indicated in its June 5, 1985 recommendations.

Given the mandate of the CACSW to advise the government and inform the public on matters of interest and concern to women, and given the extremely disadvantaged employment situation which presently exists for Canadian women, the Council is pleased to elaborate for this Legislative Committee its views on Bill C-62. Although Bill C-62 is our immediate concern, the other employment equity measures introduced in March 1985 are also important and will be addressed in this discussion.

OUTLINE OF BILL C-62

The purpose of the Bill is defined in Section 2. It is "to achieve equality in the work place so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and . . . to ameliorate the conditions of disadvantage in employment"[12] experienced by four designated groups.

"Designated groups" are defined, in Section 3, as meaning women, aboriginal peoples, disabled persons, and members of visible minorities. This section also sets out which employers are covered by the Bill. It applies to federally regulated businesses, including Crown corporations, which employ 100 or more employees.

Section 4 of the legislation, describes in two parts what actions these employers will be required to take in order to implement employment equity. Section 4 states that:

> An employer shall implement employment equity by
> (a) identifying and eliminating each of the employer's employment practices . . . that results in employment barriers against persons in designated groups; and
> (b) instituting such positive policies and practices and making such reasonable accommodation as will ensure that persons in designated groups achieve a degree of representation in the various positions of employment with the employer that is proportionate to their representation (i) in the work force, or (ii) in . . . segments of the work force . . . from which the employer may reasonably be expected to draw or promote employees.[13]

Section 5 defines the reporting requirements – what information employers will be expected to file and when. This section stipulates that as of June 1, 1988, and each year thereafter, federally regulated companies are required to submit annual reports to the Minister of Employment and Immigration, supplying information on:

- the company's industrial sector and location;
- number of employees;
- number of persons in designated groups employed;
- occupational groups, by representation of persons in designated groups;
- salary ranges, by designated group in each range and subdivision;
- and the number of employees hired, promoted and terminated, by representation of persons in designated groups.

Instructions indicating the specific form and manner of collecting and reporting on this data are to be contained in **regulations**, the final drafting of which will follow the passage of Bill C-62.

Section 6 of the Bill provides for a fine for employers who fail to comply with Section 5 (i.e., the reporting requirements). The fine is not to exceed $50,000.

According to Section 7 of the legislation, the Minister of Employment and Immigration is each year required to consolidate and analyse the employer's reports and to present them to Parliament. Each company's report, as well as the Minister's final report, shall be made available to the public as stipulated in Section 8.

Section 9 provides that the government may issue **regulations** which would specify in detail the nature of the information required, and the categories and format employers must use in reporting the data called for under Section 5. The proposed contents of the regulations have recently been issued as a discussion document for public comment.

Finally, Section 10 provides that the Minister of Employment and Immigration may issue **guidelines** for the purpose of assisting employers in the actual implementation of an employment equity program, as required under Section 4. It is expected that the guidelines will be issued by the government early in 1986.

ANALYSIS OF BILL C-62

In general, laws define goals and expectations and set out the methods, policies or practices for achieving the goals. "They entrench objectives and . . . they define the limits of acceptable behaviour."[14] It is therefore important and necessary, in examining Bill-62, to assess the extent to which it achieves depth, thoroughness, clarity, and conviction in presenting employment equity, as both a concept and a program, to the public and especially to employers.

While the Advisory Council acknowledges the steps taken by the government in bringing foward legislation aimed at achieving equality in employment, we have found Bill C-62 definitely lacking in certain important

qualities. In general the Bill lacks clarity and thoroughness in defining employment equity, both in terms of what needs to be reported and what needs to be done to implement such a program. It also lacks strong direction in setting out both these types of expectations. The CACSW's concrete concerns fall into four general areas, which will be discussed in turn – they are: the coverage criteria, the definition of employment equity, the reporting criteria, and enforcement mechanisms.

1. Coverage Criteria

The first, most basic concern regarding the employment equity legislation is its limited coverage. Clearly, in view of women's vulnerability in most employment sectors, the most desirable goal would be to have the legislation cover as many employers as possible. Yet as indicated in Section 3 of the Act, coverage extends only to those federally regulated employers, including Crown corporations, which employ 100 people or more.

Therefore, the Council would like to raise the question of whether the legislation should apply to businesses with fewer employees. It is instructive to note that under the American contract compliance program, a court can order companies with only fifteen or more employees to implement an affirmative action program.[15]

The Canada Employment and Immigration Commission (CEIC) has estimated that Bill C-62 covers one million employees of 1200 federally regulated employers in Canada.[16] However, we do not yet know how many federally regulated businesses have fewer than 100 employees and are therefore excluded from coverage, nor do we know the number of excluded employees in total. Given this lack of data, we would argue that it is premature to set a limit of 100 or more employees. Studies should be undertaken to determine the possible impact of extending the coverage of the legislation to small businesses. Until the limit of 100 or more employees can be justified, the question must remain open whether smaller businesses should be excluded from coverage.

A similar concern, regarding the amount of the fine which has been set (in Section 6 of the legislation) for companies who fail to report as required, will be discussed within the context of enforcement mechanisms.

2. Definition of Employment Equity

In order for a law to provide direction or lead to the desired action it must contain adequate substance or content. It must express in a definite, substantial, and firm manner what is expected of those to whom it applies. The substance of a law should not be relegated to guidelines which are, in fact, auxiliary to the legislation, **per se.**

With this in mind, the Council has a number of concerns which relate to the fact that certain measures which we believe are integral to employment equity have not been included in the legislation itself, but rather have been left to be included in the **guidelines.** The guidelines will not be introduced by the government until early 1986. They are to assist employers by setting out the process and the necessary steps involved in implementing employment equity programs. However, the guidelines will not be binding on employers. Employers will be free to follow or ignore them, or select for themselves which elements and measures constitute their own employment equity program.

Section 4 of the legislation requires employers to institute "positive policies and practices . . .". It does not, however, specifically name the areas in which employers would be expected to adjust their practices and institute non-discriminatory or positive policies. This has been left to the promised guidelines. The Abella Commission proposed that certain practices be itemized as requirements **within the legislation itself.** The Council is in agreement with this position. These practices could include, but need not be limited to, the following areas: recruitment and hiring practices, promotion practices, pension and benefit plans, workplace accessibility, occupational testing and evaluation, occupational qualifications and requirements, parental leave provisions, opportunities for education and training leaves, and equal pay for work of equal value. It is obvious that listing these areas would contribute greatly toward a shared and thorough

understanding by employers of what is involved in putting the principle of employment equity into action.

The Council also agrees with the recommendations of both the Abella Commission and the Parliamentary Committee on Equality Rights (Boyer Committee) that it is essential that each company involve employee groups and members of the designated groups in the planning and implementation of their employment equity program. The Council would agree that this requirement should be included in Section 4 of the legislation.

Finally, goals and timetables are essential elements in the design and implementation of an effective affirmative action or employment equity program. The most successful (in terms of providing equal opportunity for employees) of the Canadian corporations studied by the Abella Commission stressed the importance of goals and timetables. The U.S. contract compliance program covering government contractors has included mandatory goals and timetables since the early 1970s. According to a survey conducted late last year, more than 90% of the chief executive officers of 127 large U.S. corporations said that numerical objectives in their company's affirmative action program were established partly to satisfy "corporate objectives unrelated to government regulations". Nearly all of them (95%) said they would continue to use them regardless of government requirements.[17]

Without goals, there is no basis on which to compare and analyse data or determine progress. As such, the Council proposes that goals and timetables be made a mandatory requirement rather than being left in the form of "guidelines".

3. Reporting Criteria

The information which employers will be required to report is listed in Section 5 of the Bill. It includes number of employees, number of persons in designated groups employed, and so on. The **regulations** (which are separate from the Bill itself but are binding on employers) clarify and define the categories of information, and provide the formats which employers will be required to use when

reporting. The proposed contents of the regulations have recently been released for public review.

The Council has two primary considerations with respect to the data to be reported. First of all, it is essential that employers be required to report on a full range of data, and with a sufficient level of detail, so as to ensure that the results adequately reflect reality. Without comprehensive data the impression can be given that no systemic discrimination exists when it is simply obscured. For example, a company may claim that its work force is representative overall of the designated groups but in fact have members of these groups clustered in part-time jobs, or short-term positions (at Christmas, for instance) without these facts being reflected in the data reported. A further breakdown of data would be required to draw this out.

Secondly, the data reported must be standardized to allow comparisons to be made between companies and within companies over time. The ability to compare public service and private sector jobs would be very important since it would be expected that the federal government – the largest single employer of women – would lead the way in achieving equality in employment. The ability to make comparisons between elements is basic to any coherent system, and generally allows for the progress of companies in remedying systemic discrimination to be assessed.

In examining Section 5 of the legislation, the Council has found that certain essential categories of information are missing from the list of required data. These include the breakdown of jobs into full-time and part-time positions, the number of applicants in each target group for hirings, and figures on lateral transfers and demotions. The Council has previously recommended (June 1985) that data be added to the legislation which would show movements within the work force (including standardized data on turnover, vacancy rates, hirings, lay-offs, terminations, and promotions), as well as training and development opportunities, for all target groups by occupation and salary.

Although the proposed contents of the **regulations** do attempt to ensure that the data reported is consistent and standardized, they do nothing to lessen our

concern that the data required of employers is not as comprehensive as it must be in order to achieve the goals of the legislation. The **regulations** explain and clarify the information stipulated in the Act (for example, it provides the job categories to which all jobs are to be assigned). It does ask employers to make a distinction, when reporting, between permanent full-time and permanent part-time employees. However, it does not ask employers to report on the number of applicants (and their representation by designated groups) for each hiring, or on job transfers, or demotions. Such data would be highly relevant in ascertaining discriminatory effects. Since some companies already collect such data, these requirements would not necessarily present an insuperable collection task.

The Council, therefore strongly reaffirms its June 5, 1985 recommendation and further recommends that if the data reported is to be useful these additional categories of information should be included (either in the legislation or in the regulations), as part of the data employers would be required to report.

4. **Enforcement Mechanisms**

"The requirement to implement employment equity lacks credibility without an enforcement component."[18] Good intentions are of little value if they cannot be enforced.

While Section 5 of the Bill, requiring employers to **report** data, is enforceable (i.e., subject to penalty), Section 4, which requires employers to plan and **implement** employment equity programs, **is not** enforceable. There is an implicit reliance on public scrutiny or public pressure as a means of enforcement, essentially by shaming employers into compliance. This approach is dependent on target group organizations in the voluntary sector to monitor the data reported, and to bring complaints to court on their own or to the Canadian Human Rights Commission for further investigation.

The solution to this lack of enforcement being advanced by the Minister of Employment and Immigration has been to designate the Canadian Human Rights Commission (CHRC) as the enforcement mechanism for Bill C-62. It must be

realized, however, that the CHRC cannot enforce Bill C-62. It can only enforce the **Canadian Human Rights Act**. Under this Act the Commission may initiate a complaint and carry out an investigation given reasonable grounds for believing that a person is engaging in or has engaged in discriminatory practices. (In some cases where a Human Rights Tribunal is appointed, a person who is found guilty of discrimination can be ordered to adopt special measures to prevent the discriminatory practice from occurring in the future.) In effect, Bill C-62 will assist the CHRC in being more active in carrying out its traditional role of initiating and investigating complaints of discrimination. However, it would still constitute a case-by-case response to the problem of employment discrimination. The requirement to implement an employment equity program under Bill C-62 is still essentially voluntary.

The past has clearly shown such a voluntary approach to be ineffective. Voluntary programs of various kinds have been undertaken on behalf of women in the public sector, with very few concrete results to date. Since 1979, more than 1400 private sector employers have been contacted by the Canada Employment and Immigration Commission and encouraged to participate in an affirmative action program. As of July 1984, only 71 companies had agreed to do so.[19] The executives of Crown corporations interviewed by the Abella Commission themselves have acknowledged that reporting alone is not likely to be a sufficient incentive to eliminate discrimination.[20] Three recent American reports based on the long experience with contract compliance and affirmative action in that country have also confirmed that enforcement is vital to the success of affirmative action programs.[21]

Given this experience, the Council views the lack of enforcement of the requirement to implement employment equity as the most fundamental weakness of the legislation. We therefore recommend that Section 4 be made enforceable, so that companies who fail to comply will be subject to penalties. This recommendation has also been made by the Abella Commission, the Boyer Committee, and the Royal Commission on the Economic Union and Development Prospects for Canada.[22]

If the requirement to implement employment equity is to be mandatory, as the Council recommends, there is a need for an independent agency to monitor and assess the progress employers are making. This independent enforcement agency should have qualified staff and sufficient human and financial resources to function effectively. Some reports have recommended that this be a function of the Canadian Human Rights Commission. However, there is some discussion at present whether this would create an unresolvable conflict of interest for the Commission, since it would be responsible for monitoring and providing guidance to employers on the implementation of programs on one hand, and on the other, it would be responsible for investigating and settling complaints made against employers. Whether the enforcement function be assigned to the Canadian Human Rights Commission (if the conflict of interest question can be resolved), or to a newly created independent agency, it is crucial that it be put in place rapidly and allocated sufficient human and financial resources. (This recommendation was made by the CACSW in June 1985.)

Finally, there is a question concerning the fine for not complying with the reporting requirements (Section 5), which has been set at "not exceeding $50,000" (Section 6). A fine of $50,000 may at first glance seem to be a large amount. However, it cannot really be known at this point whether it would be an effective deterrent for large companies. In view of this, it would be more reasonable to study this issue further and then perhaps set the amount of the fine in proportion to the size of the companies covered by it.

These then constitute the concerns of the CACSW with regard to the proposed employment equity legislation. At the same time as the federal government promised Bill C-62 (March 8, 1985), it also introduced several other employment equity measures which affect federal contractors, the Public Service, and Crown corporations. We would like to turn now to a brief discussion of our concerns with regard to these measures.

OTHER EMPLOYMENT EQUITY MEASURES

With regard to federal contractors, the government announced that businesses of 100 or more employees bidding for contracts worth $200,000 or more would be required to declare their commitment to implementing an employment equity program. The Canada Employment and Immigration Commission will carry out spot checks to determine whether companies are fulfilling this obligation. If it is determined that a company is not taking steps towards achieving employment equity, it will lose its rights to compete for future contracts with the federal government.

These measures are sometimes referred to as "contract compliance". However, according to these measures companies are only required to declare a commitment to employment equity in submitting their tenders. The requirement to implement an employment equity program is not stipulated in the contract. Nor are companies obliged to show that they have developed an employment equity plan prior to being awarded the contract. Moreover, in the majority of cases, by the time the CEIC has investigated a company, has found that the company is not complying, and has recommended that it be struck from the list of potential contractors, it is highly likely that the contract will have ended. Nor is there any apparent intention on behalf of the government to halt a contract midway.[23]

The CACSW recommended in December 1984 that contract compliance be instituted immediately, and that federal contractors must be made to comply with existing anti-discrimination legislation and the principle of equal pay for work of equal value as legislated under the **Canadian Human Rights Act.** The government's measures introduced in March 1985 are not sufficient to ensure that employment equity will be implemented among federal contractors. Therefore, the Advisory Council recommends that the federal government establish a contract compliance program requiring companies to have developed an employment equity plan, and to declare a commitment to implementing their plan as a condition stipulated in the contract.

The second problem relates to the question of who is covered by the newly introduced measures. It has been estimated (based on last year's lists of

companies) that only 500 companies out of a total of 50,000 are covered by the measure.[24] As with the criteria set out in Bill C-62, the criteria of 100 or more employees stands in marked contrast to the U.S. contract compliance program covering businesses with 15 or more employees. A second question concerns the minimum amount of the contract, which has been set at $200,000. What is the justification for excluding companies bidding for less valuable contracts? The Council endorses the recommendation of the Boyer Committee on Equality Rights for a strong contract compliance program with extensive coverage. The Boyer Committee recommended that a contract compliance program be established by legislation applicable to all firms providing goods and services to the government of Canada, with necessary adjustments being made, by regulation, on the basis of the size of the firm or the volume of its business with the government.[25]

Also announced on March 8, 1985, were new measures designed to achieve the goal of employment equity within the Public Service by strengthening the implementation of its existing affirmative action program. Within this program, which was extended throughout the Public Service in June 1983, each government department has been required to prepare an action plan to increase the representation of target groups, to be implemented over a three-year period, ending March 1988. The new measures call for: a review of the job classification system to identify systemic barriers; the establishment of a union-management committee to prepare an implementation plan in the area of equal pay for work of equal value; and increased emphasis on the strategies for implementing affirmative action plans in departments, including a commitment of adequate resources. In addition, Treasury Board announced the extension of employment equity to Crown corporations (which are also covered by Bill C-62) as an internal effort to regulate employment equity among these companies.

The problems currently associated with the Public Service program are instructive as to the nature of potential problems which might arise under the legislated employment equity program in Bill C-62. That is, considerable variation has been reported in the action plans which departments have submitted to the Treasury Board.[26] Each department has been allowed to carry out its own work force analysis, using different questionnaires, collecting different information, and producing different types of action plans – some more ambitious than others. Since

the plans are only in the beginning stages of implementation it is too early to assess the effectiveness of the Public Service program in achieving equity in employment, but the inconsistencies in the approaches to the problem taken by the departments is not likely to provide a firm foundation for success.

CONCLUSIONS

The CACSW considers employment equity to be vitally important to women and other disadvantaged groups, and to society as a whole. It has carefully monitored the progress leading to the current legislation. Researchers, policy analysts, and activists in women's issues have spent a great deal of time documenting and discussing the severe disadvantages in employment which women and members of the other three designated groups, have faced and still face, largely owing to systems which have been continuously in place in the workplace. Strategies for remedial measures have been developed. All this has taken place with few actual results.

The report of the Abella Commission makes it clear that concrete and effective action is long overdue. The **Canadian Charter of Rights and Freedoms** has made equality a constitutional goal which we must strive for. The need for special measures to eliminate discriminatory practices and redress imbalances conforms to both the spirit and the letter of the Charter's equality provisions.

The concerns which the Council has raised regarding Bill C-62 and the recommendations and proposals which have been put forward have been made in the spirit of enhancing the legislation and improving its potential for effectiveness. Much has been learned both from past experience with voluntary affirmative action programs in Canada, and from the American experience with mandatory programs. It is clear that voluntary approaches are ineffective. We have found goals and timetables to be essential to the success of affirmative action programs. We also believe that for employment equity to be truly effective it must be applied to as many Canadian businesses as possible. These have been the primary considerations of the Council in its analysis of the legislation and the other measures, and in the amendments it has proposed. The Advisory Council firmly believes that by

addressing the gaps and weaknesses in the legislation, a truly effective instrument for achieving equality in employment can be developed.

The recommendations which the Council has put forward in this brief are listed below.

With regard to Bill C-62:

1. Studies should be undertaken to determine the possible impact of extending the coverage of the legislation to small businesses.

2. The most important areas in which employers will be expected to adjust their practices should be included in the legislation itself; not in the form of guidelines. They should include, but not be limited to:
   - recruitment and hiring practices
   - promotion practices
   - pension and benefit plans
   - workplace accessibility
   - occupational testing and evaluation
   - occupational qualifications and requirements
   - parental leave provisions
   - opportunities for education and training leaves
   - equal pay for work of equal value.

3. The requirement for employers to involve employee groups and members of target groups in the planning and implementation of its employment equity program should be included in the legislation itself, rather than in the form of guidelines.

4. The requirement for employers to formulate goals and timetables with respect to employment equity should be included in the legislation itself, rather than in the form of guidelines.

5. Employers should be required to report a full range of information and at a level of detail sufficient to reveal possible systemic discrimination. This information should include, but not be limited to:

- work force profiles, providing standardized data on target group members by occupation and salary,
- data showing movements within the work force, including standardized data on turnover and vacancy rates, hirings, lay-offs, terminations, promotions, and training and development for all target groups by occupation and salary. (June 1985)

With regard to this recommendation, the Council believes that the following information should be included as reporting requirements:

- number of applicants in each target group for every hiring
- part-time and full-time positions
- lateral transfers
- demotions.

6. The government regulations provided for in the legislation must ensure that the information to be reported by employers is both standardized and comparable.

7. The requirement to implement employment equity should be made enforceable by the Canadian Human Rights Commission or a newly created independent agency with the appropriate mandate and resources to fulfil this function.

8. The powers and resources of the Canadian Human Rights Commission should be increased, or an independent monitoring and enforcement agency should be created which has adequate human and financial resources. (June 1985)

9. The amount of the fine should be established with reference to the size of the companies subject to it. As such, serious consideration should be given to raising the maximum amount of the fine proportionally with respect to large companies.

With regard to the employment equity measures affecting federal contractors:

1. To assure employment equity a contract compliance program should be established by legislation and it should apply to all firms providing goods and services to the government of Canada, with necessary adjustments being made, by regulation, on the basis of the size of the firm or the volume of its business with the government.

2. A contract compliance program should be established by the federal government requiring companies to have developed an employment equity plan, and to declare a commitment to implementing their plan as a condition stipulated in the contract.

NOTES

1. Royal Commission on Equality in Employment, **Equality in Employment** (Ottawa: Minister of Supply and Services, October 1984), p. 56.

2. **Ibid.**, p. 62.

3. **Ibid.**

4. Canada, Statistics Canada, **Earnings of Men and Women, Selected Years, 1967-1979** (Ottawa: Minister of Supply and Services, December 1981), p. 27; and **Earnings of Men and Women, 1981 and 1982** (Ottawa: Minister of Supply and Services, October 1984), p. 27 (data refers to full-time workers only).

5. ————————. **The Labour Force**, September 1985 (Ottawa: Minister of Supply and Services, October 1985), cat. no. 71-001, Table 22, p. 49.

6. **Ibid.**, Table 14, p. 41.

7. Royal Commission on Equality in Employment, p. 78.

8. Canada, Statistics Canada, **The Labour Force** (Ottawa: Minister of Supply and Services, October 1985), cat. no. 71-001, Table 37, p. 64.

9. Royal Commission on Equality in Employment, p. ii.

10. Rosalie S. Abella, "Equality in Employment", in **Towards Equity - Proceedings of a Colloquium on the Economic Status of Women in the Labour Market**, November 1984 (Ottawa: Minister of Supply and Services, 1985), p. 109-117, 116.

11. Royal Commission on Equality in Employment, p. 203.

12. Canada, House of Commons, 1st session, 33rd parliament, **Bill C-62: An Act Respecting Employment Equity.**

13. **Ibid.**

14. Royal Commission on Equality in Employment, p. 202.

15. Jennifer Lewington, "Equality programs 'an illusion' ", **Globe and Mail**, November 15, 1985, p. A8.

16. Information supplied by the Employment Equity Section of the Canada Employment and Immigration Commission.

17. Anne Fisher, "Businessmen Like to Hire By the Number", **Fortune Magazine**, November 16, 1985, pp. 26-30.

18. Royal Commission on Equality in Employment, p. 214.

19. **Ibid.**, p. 197

20. **Ibid.**, p. 203.

21. **Ibid.**, p. 209.

22. Royal Commission on the Economic Union and Development Prospects for Canada, **Report**, Volume Two (Ottawa: Minister of Supply and Services Canada, 1985), p. 643.

23. Information supplied by the Employment Equity Section of CEIC.

24. **Ibid.**

25. Parliamentary Committee on Equality Rights, **Equality For All** (Ottawa: Supply and Services Canada, October 1985), p. 111.

26. Information supplied by the Women's Advisory Committee on Affirmative Action which advises Treasury Board on the Public Service program.